

PROCEEDINGS OF THE DAY
33

Day and Date	Thursday and 18.01.2024
Complaint No.	CR/5328/2022 Case titled as Jay Parkash Mehta and Krishna Kumari VS Roshni Builders Private Limited
Complainant	Jay Parkash Mehta and Krishna Kumari
Represented through	Shri Chaitanya Singhal Advocate
Respondent	Roshni Builders Private Limited
Respondent Represented	Ms. Shriya Takkar and Smriti Advocates for R1 Shri Dhruv Lamba Adv. for R2
Last date of hearing	12.10.2023
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 03.08.2022 and registered as complaint No. 5328 of 2022 and reply on behalf of respondent no. 1 and respondent no. 2 was received on 27.01.2023 and 10.10.2023 respectively.

The succinct facts of the case are as follows:

S.No.	Particulars	Details
1.	Name of the project	"M3M Broadway, Sector- 71, Gurugram.
2.	Project area	7.84875 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	71 of 2018 dated 25.02.2018 valid till 24.10.2023
5.	Name of licensee	Roshni Builders Pvt. Ltd., Highrise Propbuild Pvt. Ltd
6.	RERA Registered/ not registered	31 of 2008 dated 14.12.2018 valid up to 31.10.2023
7.	Unit no.	R4 105, 1 st floor & Tower-4 (As per page no. 94 of the complaint)



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

8.	Unit area	403 sq. ft. (Carpet Area) & 801.43 sq. ft. (Super Area) (As per page no. 94 of the complaint)
9.	Date of booking	26.07.2020 (As alleged by the complainant on page no. 10 of the complaint)
10.	Allotment letter	05.08.2020 (As per page no. 25 of the complaint)
11.	Date of execution of agreement for sale	Annexed but not executed
12.	Possession clause (As per annexed agreement for sale)	7. POSSESSION OF THE UNIT 7.1 Schedule for possession of the said Unit: - The Developer agrees and understands that timely delivery of possession of the Unit along with the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottee or the competent Authority, as the case may be, as provided under the Act and Rules 2(1)(f) of the Rules, 2017, is the essence of the Agreement.
13.	Due date of possession	31.10.2023 (As per mentioned in the RERA registration)
14.	Total sale consideration	Rs.1,20,61,972/- (As per payment plan on page no. 30 of the complaint)
15.	Amount paid by the complainant	Rs.12,06,196/- (As per receipt information on page no. 37-42 of the complaint)
16.	Occupation certificate /Completion certificate	13.12.2021 (As per page no. 113 of the reply)
17.	Offer of possession	Not Offered
18.	Pre cancellation notice	11.11.2021 (As per page no. 104 of the complaint)
19.	Demand letter	22.10.2021 (As per page no. 102 of the complaint)
20.	Cancellation letter	27.11.2021



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(As per page no. 105 of the complaint)

The counsels for the complainants states that the unit was booked on 26.07.2020 on payment of 10% consideration money under a 10:90 plan under which the remaining 90% amount was required to be paid on offer of possession after obtaining OC. However while issuing the allotment letter on 05.08.2020, the payment plan was unilaterally altered to 10:80:10 plan and was protested and three number of emails were written to the respondent on 02.09.2021, 21.09.2021 and again on 30.09.2021. Thereafter the respondent has issued an assurance vide email dated 08.10.2021 at page No.114 of the complaint that the remaining amount will be demanded at the time of possession and no interest shall be charged on such deferred payment. The OC of the unit has been obtained by the respondent only on 13.12.2021 while the unit is cancelled on 27.11.2021 with a pre-cancellation notice issued on 11.11.2021 which is not valid since the remaining amount is required to be paid only on receipt of OC while the above demands have been raised even before making a valid application for OC which was made only on 01.12.2021 and hence requests for allowing full refund alongwith interest. The complainant present in person states that verbal assurances were given by the marketing head for the refund of the amount but the same is not yet refunded.

The counsel for the respondent states that as per allotment letter placed at page 84 to 89, the unit was allotted on 10:80:10 plan only and part payment was made by the complainant after issuance of above letter and hence the payment plan cannot be disputed at this stage. Further vide email dated 8.10.2021 (page 114 of the complaint) no change in plan was accepted and rather cancellation of the unit has been made on request of the complainant-allottee at page 108. The counsel further states that the complainant through mail dated 02.09.2021 (page 117) has been seeking the pre-hand over amount and not change of payment plan and as per clause 14 of the allotment letter, the respondent is entitled to forfeit 10% earnest money. The application for OC was made on 31.08.2021 as mentioned in the copy of OC granted by DTCP and demands have been raised after making application for OC.

The counsel for R2 states that no material evidence has been placed on record w.r.t real estate agent and hence, the name of respondent No.2 may be deleted.



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The counsels for both the parties may file written submissions within 15 days with an advance copy to each other.

Arguments heard.

Order reserved.

Matter to come up on 07.03.2024 for pronouncement of order.

V. I. - 3
Vijay Kumar Goyal
Member
18.01.2024